

ORDINANCE NO. 28718

AN ORDINANCE OF THE CITY OF SAN JOSE EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS PENDING THE REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, SETTING FORTH THE FINDINGS TO SUPPORT THE EXTENSION OF SUCH TEMPORARY MORATORIUM, AND MAKING THE EFFECTIVENESS AND APPLICABILITY OF THE PROVISIONS OF THIS ORDINANCE RETROACTIVE TO OCTOBER 9, 2009

WHEREAS, it is estimated that there are between 50 and 150 bail bonds establishments located in the City, with approximately 20 located in the vicinity of North First Street between Jackson Avenue and Interstate 880; and

WHEREAS, residents located near bail bonds establishments recently have raised concerns related to the operations of these establishments, which concerns generally relate to the disruptive behavior of persons seeking bail bond services (such as yelling, physical violence, soliciting money from residents to make bail, and leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences) and which behavior occurs at or near these establishments, and the City Council has indicated its concerns about these serious issues raised by the community; and

WHEREAS, under current land use regulations bail bonds establishments are treated as personal services uses and allowed to operate prior to midnight and after 6:00 a.m. in the CG Commercial General, CN Commercial Neighborhood, CP Commercial Pedestrian, and CIC Combined Industrial Commercial zoning districts and may operate during other hours with a conditional use permit in those same zoning districts; and

WHEREAS, questions have arisen regarding the appropriateness of treating bail bonds establishments as a personal service use under City's land use regulations, rather than as an office or other type of use; and

WHEREAS, pursuant to California Government Code Section 65858, the City may adopt an ordinance temporarily prohibiting uses that may conflict with a contemplated zoning ordinance amendment that the City wishes to study and consider within a reasonable period of time where the City finds that there is a current and immediate threat to the public health, safety, or welfare and approval of such uses would result in that threat to public health safety or welfare; and

WHEREAS, on August 25, 2009, the City Council adopted an interim ordinance, Ordinance No.28629, to establish a temporary moratorium on the establishment of new bail bonds establishments pending the review and possible amendment of land use regulations applicable to such establishments and setting forth findings in support of such moratorium (the "Interim Ordinance"); and

WHEREAS, by operation of the provisions of California Government Code Section 65858, the Interim Ordinance will expire on October 9, 2009 and the City Council desires to extend the temporary moratorium imposed under the Interim Ordinance as allowed under that state law; and

WHEREAS, the City Administration has commenced its review of the appropriate land use regulations applicable to bail bond establishments in light of historical and recent information provided to City in connection with the land use issues posed by the operations of such establishments; and

WHEREAS, the City Administration will not be able to bring forward to the City Council its recommendations related to the appropriate land use regulations of bail bonds establishments prior to the expiration of the Interim Ordinance; and

WHEREAS, in order to provide sufficient time for the City Administration's review and examination of such land use regulations, including outreach to the public and affected businesses, the City Administration has recommended to the City Council that the temporary moratorium established by the Interim Ordinance be extended for a period of up to 22 months and 15 days from October 9, 2009, pursuant to California Government Code Section 65858; and

WHEREAS, the City Council desires to communicate its current intent that City not change the regulations pertaining to bail bonds establishments and implement new regulations until the expiration of the contemplated 22 months and 15 days extension period described herein, recognizing that the current City Council cannot bind the actions of future City Councils, but also recognizing the needs of bail bonds establishments to make leasing or site improvement decisions and not wanting to presently contribute undue uncertainty regarding the timing of potential changes in pertinent land use regulations applicable to these businesses; and

WHEREAS, in the event that the temporary moratorium was not extended during such period of review and examination, the community would be in jeopardy of new bail bonds establishments commencing operations under existing land use regulations prior to the potential adoption of new land use regulations intended to preserve and protect the public health, safety and welfare; and

WHEREAS, in fairness to all businesses and citizens, the City Council desires to extend the temporary moratorium on the establishment of new bail bonds establishments in City while the City Administration continues to conduct and complete its review and formulate its report and recommendation on this matter and until such time as the City Council has made a decision on the appropriate land use regulations applicable to bail bonds establishments; and

WHEREAS, pursuant to California Government Code Section 65858, City may adopt an ordinance to extend the temporary moratorium previously imposed to continue to prohibit bail bonds establishment uses that may conflict with a contemplated zoning ordinance amendment that City wishes to study and consider if the City finds that there is a current and immediate threat to the public health, safety, or welfare and approval of such uses would result in that threat to public health safety or welfare; and

WHEREAS, the Administration has provided the City Council with a written report dated August 5, 2009 describing the measures taken by the Administration thus far during the period of the Interim Ordinance to alleviate the conditions that led to the adoption of the Interim Ordinance; and

WHEREAS, the provisions of this Ordinance have been found to be exempt from review under the California Environmental Quality Act of 1970, together with regulations and guidelines promulgated thereunder (including without limitation Section 15061(b)(3) of the CEQA Guidelines), as well as pursuant to the provisions of Title 21 of the San José Municipal Code, under File No. PP09-102, dated April 29, 2009 (the "Exemption"), which Exemption determination has not been challenged, protested or appealed; and

WHEREAS, the City Council of the City of San José is the decision-making body for this proposed Ordinance; and

WHEREAS, this City Council has read, considered and approves said Exemption prior to taking any approval actions on this proposed Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The temporary moratorium previously adopted by City on August 25, 2009 and established and imposed as of September 25, 2009 by Ordinance No. 28629 on the following activities is hereby extended as provided for in this Ordinance:

- A. The moratorium on the acceptance or processing of an application for any permit, or the issuance of any permit, under the San Jose Municipal Code for the establishment of a new bail bonds establishment; and
- B. The moratorium on the establishment or commencement of a new bail bonds establishment use that requires no permits from the City.

SECTION 2. This temporary moratorium shall not prohibit a bail bonds establishment already operating in compliance with all applicable laws from applying to City for development or other permits or approvals necessary: (a) to address an immediate threat to public health or safety, (b) to comply with an order of a court or other tribunal of competent jurisdiction, (c) to modify its business, or the site on which the business operates, in a manner that would not result in a significant intensification of the use or the site, or (d) to relocate to another location in the City of San José in a manner that would comply with all applicable laws existing on the date of approval of any requisite permits or approvals required for such relocation or on the date of relocation if no development permits or other approvals are required for the relocation, and all such applications submitted or operations commenced pursuant to this Section 2 shall be subject to all laws and policies applicable to the proposed development, use or other activity .

SECTION 3. This temporary moratorium shall not prohibit a bail bonds establishment already operating, albeit not in compliance with all applicable laws, from applying to City for development or other permits or approvals necessary to relocate to another location in the City of San José in a manner that would comply with all applicable laws existing on the date of approval of any requisite permits or approvals required for such

relocation or on the date of relocation if no development permits or other approvals are required for the relocation, and all such applications submitted or operations commenced pursuant to this Section 3 shall be subject to all laws and policies applicable to the proposed development, use or other activity.

SECTION 4. For purposes of this Ordinance, a “bail bonds establishment” means a business that collects a fee for obtaining the release of criminal defendants from jail by pledging money or property as a guarantee that the defendant will appear in court.

SECTION 5. It is anticipated that this Ordinance shall become effective as of October 30, 2009. Upon the effective date of this Ordinance, the City Council desires and hereby directs that the effectiveness and the applicability of the terms, conditions and provisions of this Ordinance shall be retroactive to October 9, 2009, the expiration date of the Interim Ordinance, to the fullest extent allowed by law as if this Ordinance had become effective on October 9, 2009. This Ordinance shall remain in effect for twenty-two months and fifteen days from October 9, 2009, calculated to be until August, 24 2011, or until the date that a decision by the City Council on the appropriate land use regulations applicable to bail bonds establishments has been made and, if necessary, effectuated by appropriate legislation, whichever date first occurs.

SECTION 6. Pursuant to the provisions of California Government Code Section 65858, the City Council of the City of San Jose hereby finds that there is a current and immediate threat to the public health, safety and welfare of City that warrants the establishment of this temporary moratorium of new bail bonds establishments, which finding is based upon all of the following elements:

- A. The community within the vicinity of existing bail bonds establishments located in City have alerted this Council to possible concerns related to the operations of these establishments, which concerns generally relate to the disruptive behavior of persons seeking bail bond services (such as

yelling, physical violence, soliciting money from residents to make bail, and leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences), which activities are alleged to be occurring at and around such establishments; and

- B. This Council has heard these community concerns and desires that they be examined in order to inform appropriate land use regulations applicable to these establishments; and
- C. Without extension of the temporary moratorium prohibiting new bail bonds establishments while these community concerns are being examined and appropriate regulations are being developed, there remains a current and immediate threat that new bail bond establishments are allowed to operate by right prior to midnight or with development permits after midnight in certain locations in City under existing land use regulations and could further establish in City in a manner that would exacerbate and proliferate the current concerns and problematic behaviors identified by the community.

PASSED FOR PUBLICATION of title this 15th day of September, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

